

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

RICHARD GRAVELY §
VS. § CIVIL ACTION NO. 5:08cv64
UNITED STATES OF AMERICA §

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Richard Gravely, an inmate confined at the Federal Correctional Institution in Texarkana, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes petitioner's objections should be overruled.

Petitioner objects to this action being construed as a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. However, the magistrate judge properly treated the petition as a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 under the

savings clause provided for in § 2255. As the magistrate judge correctly observed, this court is without jurisdiction to entertain a motion to vacate sentence because petitioner was convicted in the United States District Court for the Southern District of West Virginia and has previously filed a motion to vacate, set aside or correct sentence.

Petitioner's petition does not meet the criteria required to support a claim under the savings clause of 28 U.S.C. § 2255. *See Padilla v. United States*, 416 F.3d 424 (5th Cir. 2005); *Reyes-Requena v. United States*, 243 F.3d. 893 (5th Cir. 2001). Thus, this petition should be dismissed.

O R D E R

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 4th day of June, 2008.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE